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No. 86-1198

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., AND
GUILLORY TANK TRUCK SERVICES, INC.

VERSUS

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

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February 16, 1987

28 pp

QUESTION PRESENTED

The question presented by this Motion to Dismiss for Want of a Substantial Federal Question is whether the questions presented by appellant, Chevron U.S.A. Inc., in its Jurisdictional Statement are so unsubstantial, as recognized by the Louisiana appellate courts, so as not to warrant further review by and argument before this Court. In particular, the unsubstantial questions raised by appellant are:

1. Whether the privilege asserted pursuant to LSA-R.S. 9:4861 (hereinafter the "Louisiana Oil Well Lien Statute") by appellees on appellant's mineral lease, including those portions of the lease beyond the unit on which appellees' work was performed, constitutes a "taking" of property without compensation in violation of the due process requirements of the Fourteenth Amendment to the Constitution of the United States.
2. Whether the privilege asserted pursuant to the Louisiana Oil Well Lien Statute by appellees on appellant's mineral lease, including those portions of the lease beyond the unit on which appellees' work was performed, denies appellant equal protection of the laws in conflict with the Fourteenth Amendment to the Constitution of the United States.

PARTIES TO PROCEEDINGS BELOW

Original parties before the Supreme Court of the State of Louisiana were:

1. Appellant — Chevron U.S.A. Inc.; parent company — Chevron Corp; affiliated companies — A.K. Chemie G.m.b.H.; A/S Hydrantanlaegget Koebenhavns Lufthavn, Kastrup; Aircaft Fuel Supply B.V.; AMAX Inc.; Arabian American Oil Company; Aramco Overseas Company; Aramco Services Company; Associated Octel Company (Plant) Limited; Associated Octel Company Limited, The; Atlas Supply Company; Burgan Pension Fund Trustees Limited; Canaport Limited; Cansulex Limited; Canyon Reef Carriers, Inc.; Cetus Corporation; Compania De Niquel Colombiano, S.A.; Coromondel Fertilisers Limited; DE BA — S.p.A. — Industria Petrolifera; Felix Oil Company; Freeport Trading Company Limited; Glen Park Gas Pipeline Company Limited; Hydrant Servicing Company Limited; International Gas Transportation Company Limited; Iranian Oil Participants Limited; Iranian Oil Services (Holdings) Limited; Irving Oil Company, Limited; Irving Oil Limited; Irving Oil Terminals Ltd.; Karonite Chemical Company, Limited; Laurel Pipe Line Company; Long Beach Oil Development Company; Maasvlakte Olie Terminal N.V.; Mainline Pipelines Limited; Marine Agents and Brokers Limited; MARS — Milan Airport Refuelling Services S.p.A; Mittelland Refinery Limited; N.V. Rotterdam-Rijn Pijpleiding Maatschappij; Nippon Petroleum Detergent Company, Limited; Octel Societe Anonyme; Oil Insurance Limited; Oil Investment Corporation Ltd.; Pembroke Capital Company Inc.; Petrosynthese S.A.; Plantation Pipe Line Company; Raffineria de Roma S.p.A.; Rimbey Pipe Line Co. Ltd.; River Nile Petroleum Company Limited; Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.; Rotterdam-Antwerpen Pipjpleiding (Belgie)

N.V.: SARACO S.A.; Saudi Cable Company; SERAM — S.p.A.; Societa per Azione Raffineria Padana Olii Minerali SARPOM; Societe d'Etude et d'Exploitation de la Raffinerie du Tchad; Standard Pacific Gas Line Incorporated; Sultran Ltd.; TAR — Tankanlage Ruemlang A.G.; Trans-Arabian Pipe Line Company; UBAG — Unterflurbetankungsanlage Flughafen Zurich; UNC Incorporated; United Kingdom Oil Pipelines Limited; West Texas Gulf Pipe Line Company.

2. Appellees — Lor, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc.

3. Other Parties — Other parties to the proceeding in the court whose judgment is sought to be reviewed, i.e, the courts of the State of Louisiana, are the following: Martin Exploration Company, F.F.K. Gas & Oil Properties f/k/a F.F.K. Oil Company, and W.R. Fairchild Construction Company, Ltd., and its General Partners, Wiley Fairchild, Charles D. Fairchild, Herbert D. Fairchild and Rodney Fairchild.

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The appellees move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Louisiana on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further review or argument.

STATE STATUTE INVOLVED

This appeal raises the question of the constitutional validity of a portion of the Louisiana Oil Well Lien Statute, LSA-R.S. 9:4861, *et seq.* The specific portion of the statute challenged by appellant is as follows:

> Any person who performs any labor or service in drilling or in connection with the drilling of any well . . . in search of oil, gas or water . . . has a *privilege on all* oil or gas

> produced from the well . . . and the proceeds thereof inuring to the working interest therein, and on the oil, gas or water well or wells *and the lease whereon the same are located* . . . . Any person who . . . furnishes any . . . equipment, material or supplies for or in connection with the drilling of any well in search of oil, gas or water . . . has a *privilege on all* oil or gas produced from the well or wells *and* the proceeds thereof inuring to the working interest therein and on the oil, gas or water well or wells *and the lease whereon the same are located* . . . (Emphasis added.)

LSA-R.S. 9:4861. In simple terms, insofar as this appeal is concerned, the lien statute provides a security device for oil field laborers and materialmen by allowing them a privilege or lien on the lease for which the labor or materials were supplied.

STATEMENT

1. STATEMENT OF FACTS AND HISTORY OF PROCEEDINGS

Appellees, Lor, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc., each filed suit against Chevron U.S.A. Inc. ("Chevron"), Martin Exploration Company ("Martin"), and F.F.K. Gas and Oil Properties, etc. ("FFK") on June 22, 1983 in the Twenty First Judicial District Court for the Parish of Livingston, State of Louisiana. The five matters were eventually consolidated for trial. The actions sought enforcement of appellees' liens pursuant to the Louisiana Oil Well Lien Statute, LSA-R.S. 9:4861.

The claims arose out of the failure of Martin to pay for almost One Million Seven Hundred Thousand And 00/100 ($1,700,000.00) Dollars worth of supplies, equipment, and labor which appellees furnished in connection with the drilling, reworking, or operating of the Wunsch No. 1 Well (the "Wunsch Well").

The Wunsch Well is located on a mineral leasehold granted to Chevron by Robert H. Wunsch pursuant to a mineral lease dated November 10, 1973, covering approximately 127.32 acres of land in the Lockhart Crossing Field in Livingston Parish, Louisiana (the "Wunsch Lease"). That portion of the Lockhart Crossing Field containing the 16,700′ Tuscaloosa Sand Reservoir A was divided into numerous drilling and production units pursuant to orders of the Louisiana Office of Conservation. A portion of the Wunsch Lease is included within the 16,700′ TUSCA RA SU S Unit (the "S Unit"), as designated by the Louisiana Commissioner of Conservation. The remaining portions of the Wunsch Lease are included within separate drilling and production units, the 16,700′ TUSC RA SU H Unit (the "H Unit") and the 16,700′ TUSCA RA SU F Unit (the "F Unit") (collectively, the S Unit, H Unit and F Unit are referred to hereinafter as the "Units"). Because a portion of Chevron's Wunsch lease is within the boundaries of the F Unit and the H Unit, Chevron's Wunsch lease has a working interest in all production from each of those Units.

As appellant's Jurisdictional Statement conveniently omits, Chevron received notice of the unitization application hearing before the Commissioner of Conservation, but Chevron stated no opposition to the application and did not express concern in any way. Once again, when the Commissioner selected the Wunsch lease as the surface location for the S Unit well, Chevron had notice, did not object, and failed to participate.

Subsequently, without any order from a regulatory agency, Chevron and Martin voluntarily entered into a farmout agreement (the "Farmout Agreement") pursuant to which Chevron offered Martin the right to earn certain interests in the Wunsch lease, insofar as said lease was included within the S Unit, in consideration for Martin drilling a productive well on the farmout acreage. Martin contracted with appellees and other suppliers for the labor, equipment, and supplies necessary for the

drilling of the Wunsch Well prior to completion as a commercial producer.

When it became apparent that Martin would not be able to meet its obligations, appellees timely filed and recorded liens and privileges pursuant to the Louisiana Oil Well Lien Statute against Chevron's Wunsch lease, as well as on all oil, gas, and other products produced from the lease and the Wunsch Well, and on all equipment attached to or located on the well.

Although the trial court failed to recognize appellees' liens against the entire Wunsch lease, the trial court was reversed in a unanimous decision by the First Circuit Court of Appeal for the State of Louisiana. 489 So.2d 1326 (1986). In particular, the appellate court solidly rejected the constitutional concerns raised by appellant before this Court. Appellant then requested that the Louisiana Supreme Court review the Court of Appeal's decision, which request was rejected. 493 So.2d 1217 (1986).

2. LOUISIANA CONSERVATION LAWS

Throughout the appellant's Jurisdictional Statement, an attempt is made to re-litigate and re-argue the concepts that somehow "Appellees seek the benefit of unitization but deny the effect" and the "Louisiana Oil Well Lien Statute conflicts with the Louisiana Conservation Act, LSA-R.S. 30:2, *et seq.*", although both of these concepts were soundly rejected by the Louisiana Courts. Appellant's Jurisdictional Statement at 9.

For example, appellants state: "Unitization orders of the Louisiana Commissioner of Conservation divide oil, gas and mineral leases for operational purposes." Appellant's Jurisdictional Statement at 7. Appellant made no attempt to define "operational purposes", but if appellant's statement is designed to imply that unitization can somehow limit or restrict a laborer's or materialman's lien on a mineral lease, then that is precisely the statutory interpretation rejected by the lower courts in this matter. *See, e.g.*, 489 So.2d at 1330. In order that

the record is clear, unitization is intended merely as a conservation measure, designed to provide for an orderly depletion of Louisiana's natural resources. *Arkansas Louisiana Gas Co.* v. *Southwest National Production Co.*, 221 La. 608, 60 So.2d 9 (1952). Unitization does not, and has never been interpreted to, effect economic provisions such as the Louisiana Oil Well Lien Statute.

ARGUMENT

As is evident from a reading of the Jurisdictional Statement proposed by appellant, the due process and equal protection arguments expressed therein are merely desperate attempts to prolong this already protracted litigation.[1] The arguments are totally unsubstantial and, as a result, this appeal should be dismissed.

Before turning to the due process and the equal protection arguments raised by appellant, appellee directs the Court's attention to a preliminary matter which was apparently of great importance to appellant at the time the Jurisdictional Statement was filed. Appellant noted that it filed this appeal because an identical case (i.e., involving the same defendant, the same mineral lessor, the same unit well, the same unit operator, and the same legal issues — only the plaintiff-supplier was different) was pending and appellant feared conflicting results. As appellant explained:

> A related case, involving appellant and the same constitutional questions, is pending for decision in the United States Fifth Circuit Court of Appeals. Docket No. 863043. It has

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[1] After the Louisiana Supreme Court denied Chevron's writ of certiorari regarding the decision by the Court of Appeal, Chevron filed with the court a motion to stay proceedings in the trial court pending appeal to the United States Supreme Court. The Louisiana Supreme Court denied the motion stating: "Denied. No apparent Federal Question . . . . " *Lor, Inc.* v. *Chevron U.S.A. Inc.*, No. 86-C-1259 (La. Dec. 11, 1986).

> already been argued and an opinion is anticipated.Only the plaintiff is different; the defendants, including appellant, are the same. That case is on appeal from the U.S. District Court for the Middle District of Louisiana. *JHJ Limited I* v. *Chevron U.S.A., Inc.*, 617 F.Supp. 729 (M.D. La. 1985).
>
> The instant appeal is being taken because it is the only way appellant can be protected. Without this appeal, the decision of the Supreme Court of the State of Louisiana on appellant's constitutional challenge to the Louisiana Oil Well Lien Statute, as applied to appellant in this case, will be final. If the Fifth Circuit Court of Appeals was then to render judgment in favor of appellant in *JHJ Limited I* v. *Chevron U.S.A., Inc., supra,* reversing the district court on the constitutional questions raised in these cases, appellant would have then attained the relief if seeks in the federal court system, but been denied that same relief by the Louisiana state courts. There would then be two opposite, contradictory opinions on the identical constitutional questions regarding the application of the Louisiana Oil Well Lien Statute to appellant. It is therefore imperative that appellant take this appeal and that this Court consider the constitutional questions raised.

Appellant's Jurisdictional Statement at 2. Appellant's concern that it be protected from "contradictory opinions" is now no longer a problem, because the United States Fifth Circuit has recently issued a decision affirming the trial court, thus upholding the materialman's right to assert the privilege in the exact context before this Court. *JHJ Limited I* v. *Chevron U.S.A. Inc.*, 806 F.2d 82 (1986). Therefore, the highest Louisiana State Court in the present matter and the highest Louisiana Federal Court in the *JHJ* matter have now both rejected Chevron's arguments.

With regard to the substantive due process and equal protection theories put forth by appellant, each will be examined in turn.

1. APPELLANT'S POSITION THAT THE LOUISIANA OIL WELL LIEN STATUTE HAS DEPRIVED APPELLANT OF SUBSTANTIVE DUE PROCESS IS UNSUBSTANTIAL.

Appellant's contention that the operation of the Louisiana Oil Well Lien Statute in this instance effectively constituted a "taking without compensation" in violation of the due process provisions of the Fourteenth Amendment is simply unsubstantiated by the applicable law and facts.

a. Appellant's Due Process Argument Is Premised on Improper Facts.

Appellant's Jurisdictional Statement is based completly on an attempt at this late stage of the litigation to rewrite the facts as found by the Louisiana courts. Indeed, the Jurisdictional Statement cavalierly undertakes a broad review of due process jurisprudence with the implication that the present facts involve a classic "taking" of private assets by government seizure. Of course, nothing could be further from reality. As the lower court determined in its findings of fact, Chevron not only *consented* to commercial transactions with private parties, of which transactions Chevron knew the Louisiana Oil Well Lien Statute was a part, but Chevron also unquestionably gained a *benefit* from the drilling of the Wunsch Well.

With regard to the issue of consent, the lower court, by adopting as its own the following language from *JHJ Limited 1, supra*, noted in no uncertain terms that Chevron voluntarily entered into each step of the Wunsch lease transactions with knowledge of the consequences of the Louisiana Oil Well Lien Statute, which had been enacted long before the lease transactions were considered:

> Second, as an abstract proposition, if the evidence here showed that, through orders of the state, without Chevron's knowledge or consent, a well were drilled upon its lease and that the well produced no benefit to Chevron, it might have

> some complaint of constitutional dimension. This well, however, was not drilled over Chevron's protest or in the dead of night without its knowledge and consent. The stipulated facts show that Chevron consented to the drilling of the well on its lease; first, it granted Martin surface rights to drill the well on the lease and second, it later actually entered a farmout agreeement with Martin under which it specifically consented to Martin's drilling the well.
>
> Chevron took these actions being held to knowledge of the provisions of the Louisiana Oil Well Lien Act. The purpose of that Act is to protect those, like JHJ, who contribute labor, services and equipment to the drilling of wells from the default of those who engage them. *Standard Supply and Hardware Co.* v. *Humphrey Bros.*, 209 La. 979, 26 So.2d 8 (1946). The privilege granted by that statute attaches to all property listed in the statute, regardless of ownership, *Blankenship* v. *Stovall*, 159 So. 477 (La. App. 2d Cir. 1935), and requires no contractual relationship between the supplier and the owner of the lease. *Oil Well Supply Co.* v. *Independent Oil Co.*, 219 La. 936, 54 So.2d 330 (1951).

489 So.2d at 13312. Those are the fact findings of the Louisiana court.

Although the lower court explained that a finding of a benefit to Chevron was not essential to a conclusion that the Louisiana Oil Well Lien Statute is constitutional, out of an abundance of caution, the benefit Chevron derived is briefly described here. To begin with, "Chevron gained exactly the same benefit that any other mineral lessee gains by the drilling of a dry hole on its lease", including "fulfillment of the mineral lessee's obligation to develop the property in a reasonable and prudent manner." 489 So.2d at 1332. Also, if oil and gas in producing quantities had been found at the site, Chevron would have profited handsomely; the fact that the well did not produce in paying quantities is simply a business risk which Chevron took when it purchased the lease. Furthermore, because the farmout agreement has now

terminated, Chevron is free to use the valuable geological information gained from the drilling of the Wunsch Well and proceed with exploration, production and development of the surrounding property, including the Wunsch Well.

b. Appellant's Due Process Argument Is Premised On Improper Law.

Against the foregoing facts, the law is even more clearly weighted in appellee's favor.

A now elementary principle of constitutuional law is that "[t]he day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955). *See also Nebbia* v. *New York*, 291 U.S. 502, 54 S.C. 505, 78 L.Ed. 940 (1934); *West Coast Hotel* v. *Parrish*, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937). The question of the wisdom of such enactments is quite naturally for the legislature and not the judiciary. *Williamson*, 348 U.S. at 488, 75 S.Ct. at 464-5. For this very reason, the Louisiana Oil Well Lien Statute has survived other similar constitutional challenges. *See, e.g., Sargent* v. *Freeman*, 204 La. 997, 16 So.2d 737 (1943); *Ogden Oil Co., Inc.* v. *Prudential Oil Corp.*, 490 So.2d 725 (La. App. 3d Cir. 1986).

Turning to the two-step test proposed by appellant for application in due process "taking without compensation" analysis, Chevron has no constitutional objection to the Louisiana Oil Well Lien Statute because the statute is a rational exercise of legislative authority and there has been no "taking without compensation."

i. Did the Legislature Rationally Exercise Its Authority?

The standard for determining whether the Louisiana Legislature has "rationally exercised" its authority by its protection of oilfield laborers and materialmen with the Louisiana Oil Well Lien Statute is *not* "whether *in fact* the provision will accomplish its objective", but rather whether the "Legislature *rationally could have believed* that the [A]ct would promote its objective." *Hawaii Housing Authority* v. *Midkiff*, 467 U.S. 229, 242, 104 S.Ct. 2321, 2330, 81 L.Ed.2d 186 (1984). The *Hawaii Housing* Court further stated:

> When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings — no less than debates over the wisdom of other kinds of socioeconomic legislation — are not to be carried out in the federal courts.

467 U.S. at 242-3, 104 S.Ct. at 2230. Thus, assuming that a "taking" has occurred, appellant must show that the legislature could not have thought that the taking would achieve the purpose of the Louisiana Oil Well Lien Statute. As mentioned previously, the purpose of the statute is to protect the interest of laborers and materialmen supplying goods and services in drilling operations, thereby facilitating a smooth and orderly operation of one of Louisiana's major industries.

Appellant first argues that the statute is irrational because the provision supposedly allows a blanket seizure of production from an unrelated well, thus permitting "appellees to collect from appellant personally." Appellant's Jurisdictional Statement at 14. This is simply not accurate. The Louisiana Oil Well Lien Statute does not allow a blanket privilege, only a privilege on the lease where the well in question was drilled and on which the services were performed. The fact that a portion of the lease may be contained within a neighboring unit does not, and under no rational basis should, alter this conclusion. At the very least, appellant cannot meet its burden of showing that the legislature

had no rational basis to believe that allowing a privilege on all of the lease, and not merely the portion of the lease within the unit where the well was drilled, would better insure the payment of laborers and materialmen and better enhance drilling and exploration in Louisiana. In fact, under the circumstances of this case, as well as in innumerable other cases in which a dry hole is drilled, the laborers and materialmen will only recover if their lien and privilege applies to the entire lease. Appellant's statement that the statute makes Chevron personally liable is simply not true since the liability of Chevron is *in rem* only. *See Lor, Inc.* v. *Martin Exploration Co.*, 489 So.2d at 1331. Chevron can avoid any and all further liability by surrendering the Wunsch lease or allowing it to be sold at auction.

Appellant next argues that alternatives to the Louisiana Oil Well Lien Statute exist. Whether alternatives exist are of no relevance inasmuch as the only question is whether the method chosen by the legislature is rational and not whether a better method can be found; but, in any event, the "alternatives" listed by appellant in the Jurisdictional Statement are clearly impractical and irrational in and of themselves. Appellant's Jurisdictional Statement at 14-15. The listed alternatives include such onerous items as forcing the laborers and materialmen to obtain protective bonds or demand payment in cash. Even if alternatives were a relevant consideration, a company such as Chevron clearly has limitless options of its own, not the least of which would have been its refusal to consent to any of the commercial transactions involving the lease in question.

ii. Did the Application of the Louisiana Oil Well Lien Statute Constitute a "Taking"?

Appellant argues that its property has been "impacted" by the application of the Louisiana Oil Well Lien Statute and that the impact rises to the level of an unconstitutional taking. Quite obviously, Chevron's property has been impacted — that is the nature of any lien statute; however, the impact is merely a

product of permissible economic and commercial regulation and is not a drastic intrusion by government.

This Court in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426, 102 S.Ct. 3164, 3171, 73 L.Ed.2d 868 (1982), noted two general standards to be followed in determining whether an unconstitutional taking has occurred:

> But the inquiry is not standardless. The economic impact of the regulation, especially the degree of interference with investment backed expectations, is of particular significance. "So, too, is the character of the governmental action. A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Ibid.* (citation omitted).

The first standard, economic impact and investment-backed expectations, provides no comfort to appellant here. Appellant's major argument with regard to the economic impact of the statute appears to be that Chevron should bear no liability to appellees because the funds in dispute, though arising out of the lease on which the appellees rendered services, were not *directly* produced by the services appellees provided. The problem with this argument is that Chevron knew the potential economic impact of its decision to obtain a mineral lease and consented, impliedly and otherwise, to all actions undertaken with regard to the drilling of the Wunsch Well. Although Chevron arguably made a bad economic decision, the resulting lien placed on the Wunsch lease was certainly in line with Chevron's investment-backed expectations. A similar situation arose in this Court's decision in *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984). There, Monsanto claimed that an Environment Protection Agency regulation, under which certain proprietary data of Monsanto had to be revealed to third

parties, constituted a "taking." This Court noted that a "reasonable investment-backed expectation" must be more than a "unilateral expectation or an abstract need." 467 U.S. at 1005, 104 S.Ct. at 2875. Then, this Court rejected Monsanto's claim because Monsanto had known of the regulations prior to the supposed "taking":

> Thus, as long as Monsanto is aware of the conditions under which the data are submitted, and the conditions are rationally related to a legitimate government interest, a voluntary submission of data by an applicant in exchange for the economic advantages of a registration can hardly be called a taking.

81 U.S. at 1007, 104 S.Ct. at 2876. Similarly, Chevron knew of the Louisiana lien statute long before the Wunsch transactions occurred and, as discussed before, the Louisiana Oil Well Lien Statute was a rational exercise by the legislature. The benefits and advantages received by Chevron, in addition to its privilege of doing business in the development of Louisiana's natural resources, are also outlined in the previous section of this brief.

The second standard examines the character of the government action. In other words, if the challenged action is simply "some public program adjusting the benefits and burdens of economic life to promote the common good", such as in the present case, then the statute is more likely to pass constitutional muster. *Penn Central Transportation Co.* v. *City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978). The rationale for this approach was explained in *Penn Central*:

> "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law," *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 159, 67 L.Ed. 322 (1922), and this Court has accordingly recognized, in a wide variety of contexts, that government may execute laws or programs that adversely affect recognized economic values.

438 U.S. at 124, 98 S.Ct. at 2659. The character of the action in the present case is even more innocuous because the government action (i.e., the passage of the Louisiana Oil Well Lien Statute) occurred prior to Chevron's development of any value or expectation in the Wunsch lease. Thus, the value which Chevron paid for the Wunsch lease was established because of, or in spite of, the facilitation of the oil and gas industry made possible by the Louisiana Oil Well Lien Statute.

Before proceeding to appellant's equal protection argument, brief mention must be made of a case which appellant urges is close factually and legally. *Pennsylvania Coal Co.* v. *Mahon,* 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922). In that case a mining company had obtained certain contractual mining rights which a *subsequent* statute invalidated. Certainly the facts are similar in general terms because they deal with a form of mining of natural resources, but the similarity ends there. In the present case, unlike *Pennsylvania Coal,* the government action occurred long *before* Chevron acquired any rights.

The bottom line is that there has been no "taking" because the economic impact was expected and, in fact, contemplated. Furthermore, the character of the governmental action was merely of the type to regulate economics and involved no intrusive acts by the government.

2. APPELLANT'S POSITION THAT THE LOUISIANA OIL WELL LIEN STATUTE HAS DEPRIVED APPELLANT OF EQUAL PROTECTION OF THE LAWS IS UNSUBSTANTIAL.

Just as with substantive due process, and as explained in some detail below, this Court has established a very defferential approach in examining the effect of state regulations, particularly economic regulation, in the context of equal protection. *Western and Southern Life Insurance Co.* v. *State Board of Equalization,* 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514 (1981); *McGowan* v. *Maryland,* 366 U.S. 420, 81 S.Ct. 1101, 6

L.Ed.2d 393 (1961); *Williamson* v. *Lee Optical of Oklahoma, Inc., supra; Wilson P. Abraham Construction Corp.* v. *Texas Industries, Inc.*, 604 F.2d 897 (5th Cir. 1979). In such cases, the courts invoke a "rational relation" analysis. *See e.g., Western and Southern Life Insurance Co., supra.* As lower courts in the present case and the *JHJ* case have noted, the Louisiana Oil Well Lien Statute is "purely economic legislation." *JHJ Limited I* v. *Chevron, supra,* 617 F. Supp. at 734; *Lor, Inc.* v. *Martin Exploration Co., supra,* 489 So.2d at 1332.

Although appellant does not question in its Jurisdictional Statement that the Louisiana Oil Well Lien Statute is purely economic, appellant essentially requests that this Court overturn its previous case-law and find that "strict scrutiny" analysis, and not the "rational relation" test, be applied. Relying on *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), which dealt not with equal protection but only with statutory interpretation, appellant asserts that any time a property right is adversely effected by a state regulation, this Court should find that a fundamental right has been violated and "strict scrutiny" equal protection analysis should be invoked. Without belaboring the point, appellant's position cannot be adopted for several practical reasons. First, it is likely that the majority of lawsuits filed involve some form of property interest which one party or another believes has been adversely impacted by government action. Second, if courts were required to undertake "strict scrutiny" analysis each time a property right were involved, there would be very little need for the legislative branch of government. *Williamson* v. *Lee Optical of Oklahoma,* 348 U.S. at 489, 75 S.Ct. at 465. In other words, appellant's position is not only unsupported by any authority, but its view is undesirable and unworkable.

At any rate, because the Louisiana Oil Well Lien Statute is economic regulation, the established precedent of this Court

dictates that the "rational relation" test be employed. The test involves two steps:

> In determining whether a challenged classification is rationally related to achievement of a legitimate state purpose, we must answer two questions: (1) Does the challenged legislation have a legitimate purpose? and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose? *See Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S., at 461-463, 101 S.Ct. at 722-723; *Vance* v. *Bradley*, 440 U.S. 93, 97-98, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979)

Western and Southern Life Insurance Co., supra, 451 U.S. at 668, 101 S.Ct. at 2083.

Appellant has admitted that the lien statute serves a legitimate purpose. Appellant's Jurisdictional Statement at 24. So the only inquiry relates to the second step — was the legislature reasonable? The key to the second step of the "rational relation" analysis is whether there is any conceivable basis for the legislature to have believed its action would promote the purposes of the statute. *Western and Southern Life Insurance Co., supra*, 451 U.S. at 672, 101 S.Ct. at 2085. As Professor Laurence H. Tribe has summarized this issue:

> In applying the rationality requirement, the Court has ordinarily been willing to uphold any classification based "upon a state of facts that reasonably can be conceived to constitute a distinction, or difference in state policy . . . ." This remarkable deference to state objectives has operated in the sphere of economic regulation quite apart from whether the conceivable "state of facts" (1) actually exists, (2) would convincingly justify the classification if it did exist, or (3) has ever been urged in the classification's defense by those who either promulgated it or have argued in its support. Often only the Court's imagination has limited the allowable purposes ascribed to government. In *Kotch* v. *Board of River Port Pilot Commissioners*, for example, the Court upheld the constitutionality of a Louisiana law conditioning license as a harbor pilot upon completion of an apprenticeship term, against the allegation that incumbent pilots, exercising unfettered discretion,

> selected "with occasional exception, only [their] relatives and friends" to serve as apprentices. While acknowledging the controversial nature of nepotism in the civil service, the Court sustained the law on the ground that "the benefits to morale and *esprit de corps* which family and neighborly tradition might contribute . . . *might* have prompted the legislature to permit Louisiana pilot officers to select those with whom they would serve."

L. Tribe, American Constitutional Law §16-3 (1978). Put another way, "[p]arties challenging legislation under the Equal Protection Clause cannot prevail so long as 'it is evident from all the considerations . . . that the question is at least debatable.' " *Western and Southern Life Insurance Co., supra,* 451 U.S. at 674, 101 S.Ct. at 2086.

As a result, appellant has no constitutional argument here because appellant cannot deny that the action taken by the legislature is at least debatable. Indeed, as discussed in the previous section of this brief relating to due process, the legislature's course of action was probably the most rational means of fulfilling its legitimate interest to protect laborers and materialmen, to promote the exploration of oil and gas, and to encourage development of the state's natural resources. It is logical and rational that the statute provides that the lien exists on the entire drill site lease, as opposed to only a part of the drill site lease and as opposed to other leases in the unit. The owner of the drill site lease stands to benefit more than the others. The property's value is enhanced by the location of a productive well on it. From a geological evaluation standpoint more information is obtained on a well site lease, and this is true even if the well is a dry hole. This is true because most units are like the S Unit in the present case in that they are simply "geometric units" that are formed by the Commissioner because the geology is so inexact in discerning the exact shape and size of reservoirs. Only after many years and many wells will the Commissioner grant the formation of a "geological unit" which takes the shape of the exact location

and size of a reservoir. Finally, the materialmen and laborers will be protected in many cases only if their lien attached to the entire lease as specified by the legislature. If appellant's position of what the legislature should have provided in the statute is accepted, the very purpose of the lien statute will be foiled. For these reasons there is clearly sufficient rationale for the state to allow a lien under the lien statute to be based on the lease where the well is located. Chevron thus has not been denied equal protection under the law.

In summary, appellant agrees that the Louisiana Oil Well Lien Statute serves a legitimate purpose and there is more than a conceivable basis that the legislature rationally believed the statute would further its legitimate interest. Equal protection has not been violated.

CONCLUSION

Wherefore, appellees respectfully submit that the questions upon which this case depend are so unsubstantial as not to need further argument, and appellees move the Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of the State of Louisiana.

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CERTIFICATE OF SERVICE

I, Edward D. Wegmann, one of the counsel of record for appellees, Lor, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ..... day of February 1987, I served three copies of the foregoing Motion to Dismiss for Want of a Substantial Federal Question on each of the several parties thereto as follows:

On the Honorable William J. Guste
Attorney General of the State of Louisiana
Department of Justice
234 Loyola Avenue
New Orleans, Louisiana 70112

On F.F.K. Gas & Oil Properties, etc.,
Martin Exploration Company, and
Chevron U.S.A., Inc. in properly addressed envelopes with first class postage prepaid to each of their respective counsel of record, as follows:

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It is further certified that all parties required to be served have been served, and that the list of counsel for such parties is as set forth above.

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